Public Service Staffing Tribunal

2008 – 2009

Report on Plans and Priorities

The Honourable Josée Verner
Minister of Canadian Heritage,
Status of Women and Official Languages

Table of Contents

SECTION I — OVERVIEW 1

Chairperson's Message 2

Management Representation Statement 3

Raison d'être 4

Organizational Information 4

Roles and Responsibilities 5

Program Activity Architecture (PAA) Crosswalk 6

Summary Information 8

Program Activities by Strategic Outcome 8

Tribunal Plans and Priorities 9

Operating Environment 9

Internal Factors 10

External Factors 10

Program Priorities 11

Management Priorities 12

Link to the Government of Canada Outcome areas 12

SECTION II — ANALYSIS OF PROGRAM ACTIVITIES BY STRATEGIC OUTCOME 13

SECTION III — SUPPLEMENTARY INFORMATION 17

SECTION IV — OTHER ITEMS OF INTEREST 19

SECTION I
Overview

Chairperson's Message

I am pleased to present the 2008-2009 Report on Plans and Priorities for the Public Service Staffing Tribunal (the Tribunal).

The Tribunal was established on December 31, 2005 by the *Public Service Employment Act* (PSEA) as an independent, quasi-judicial body with a mandate to consider and dispose of complaints under the new provisions for staffing and staffing recourse in the federal public service.

The preamble of the PSEA clarifies the values and ethics that should underlie staffing: "The Government of Canada is committed to a public service that (...) is characterized by fair, transparent employment practices, respect for employees, effective dialogue and recourse aimed at resolving appointment issues."

In keeping with these values from the outset, the Tribunal adopted an approach that allows parties to a complaint to resolve their differences through informal processes based on communication and sustained dialogue. Accordingly, the *Public Service Staffing Tribunal Regulations* provide several opportunities in the complaint process for the parties to come to a resolution without a formal hearing.

The Tribunal's informal processes – that is, the exchange of information, pre-hearing conference and mediation – have proven to be very successful thus far. Of the 273 files closed during the fiscal year 2006-2007, 86% (or 235 files) were resolved by the parties themselves without a decision by the Tribunal. Of the remaining files, some were decided on the basis of written submissions, others were carried over into the next fiscal year, but only three complaints proceeded to a formal hearing.

In the coming months, the Tribunal plans to build upon the practices and procedures put in place over the past two years to ensure the fair and timely resolution of complaints. Many of the Tribunal's priorities are ongoing:

- Consider and dispose of complaints
- Provide mediation services
- Improve external communications
- Strengthen corporate services
- Strengthen human resources management

New activities for the coming year include: Developing training, policies and procedures for the conduct of settlement conferences; improving the Tribunal's case management system to ensure the efficient processing of complaints and exploring ways of increasing the delivery of mediation services across the country.

Through these activities, the Tribunal demonstrates its commitment to safeguarding merit in the public service as an independent body in order that Canadians continue to benefit from a public service that strives for excellence and serves the public with integrity.

Guy Giguère

Management Representation Statement

I submit the 2008–2009 Report on Plans and Priorities (RPP) for the Public Service Staffing Tribunal for tabling in Parliament.

This document has been prepared based on the reporting principles contained in *Guide for the Preparation of Part III of the 2008–09 Estimates: Reports on Plans and Priorities and Departmental Performance Reports:*

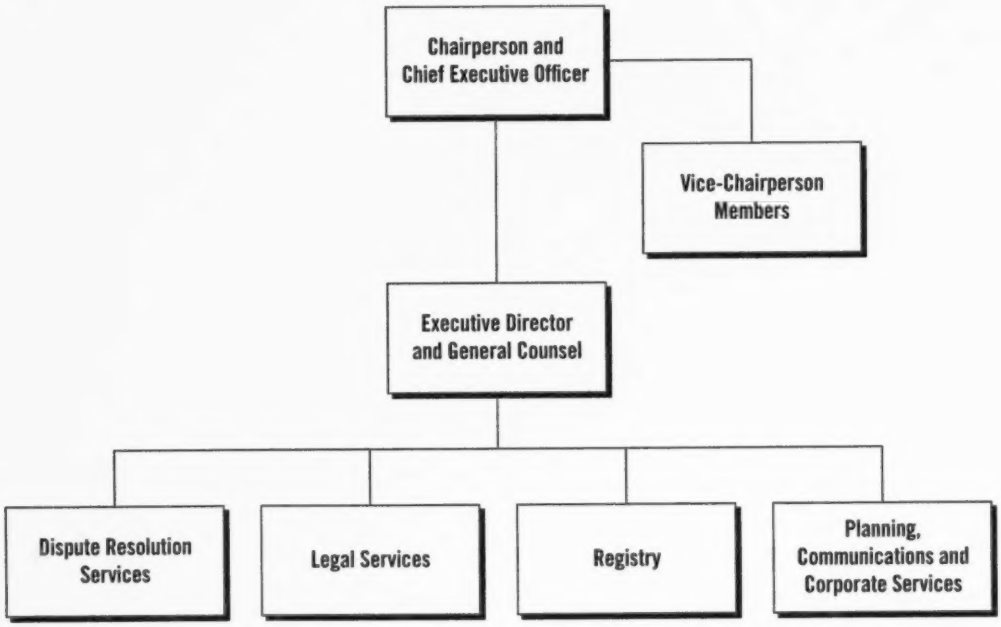
- It adheres to the specific reporting requirements outlined in the Treasury Board of Canada Secretariat guidance;
- It is based on the Tribunal's strategic outcome(s) and Program Activity Architecture that were approved by the Treasury Board;
- It presents consistent, comprehensive, balanced and reliable information;
- It provides a basis of accountability for the results achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved planned spending numbers from the Treasury Board of Canada Secretariat.

Guy Giguère
Chairperson and Chief Executive Officer

Raison d'être

The Public Service Staffing Tribunal is an independent, quasi-judicial body established under the *Public Service Employment Act* to deal with complaints related to internal appointments and lay-offs in the federal public service. The Tribunal conducts hearings and provides mediation services in order to resolve complaints.

Organizational Information



Roles and Responsibilities

The **Chairperson** is the Tribunal's chief executive officer and has supervision over and direction of the work of the Tribunal, including the assignment of complaints to members and the determination of the date, time and place of hearings. The Chairperson may authorize the **Vice-Chairperson** to exercise any of the Chairperson's powers or perform any of the Chairperson's functions.

The **Executive Director and General Counsel** is responsible for: providing advice to the Chairperson; managing the Tribunal's finances within the approved budget in accordance with financial policies and procedures; managing the Tribunal's human resources efficiently and effectively; providing expert legal advice to Tribunal members and staff on the adjudicative responsibilities of the Tribunal and any issues related to complaints, procedural matters, evidentiary issues, *Charter of Rights and Freedoms* considerations and other administrative law concerns; leading the development of the Tribunal's policies, procedures and practices with respect to its mediation, adjudication and registry functions; managing the Tribunal's overall communications strategy and outreach activities to increase awareness of the role and work of the Tribunal and leading the implementation of the policy frameworks for the Tribunal in areas such as information management, information technology, audit and evaluation.

The **Director, Registry, Operations and Policy** is responsible for the development and implementation of the Tribunal's operational policy and procedures, including case management services, registry services, the translation and dissemination of decisions and the scheduling and managing of hearing logistics with Tribunal members.

The **Director, Dispute Resolution Services** is responsible for the Tribunal's dispute resolution services, including the scheduling, organizing and conduct of mediation sessions and the development of mediation training, for Tribunal members, employees and stakeholders.

The **Director, Planning, Communications and Corporate Services** is responsible for external and internal communications and for corporate services such as strategic and business planning, finance, administrative services, material management, information technology and management, audit and evaluation and shared services arrangements.

Program Activity Architecture (PAA) Crosswalk

Old Strategic Outcome:	Contribute to a competent, non-partisan and representative Public Service through impartial and timely disposition of disputes related to the internal staffing and lay-off processes in the Government of Canada	
New Strategic Outcome:	Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada	
($ thousands)	**New Program Activity:** **Adjudication and mediation of complaints filed under the *Public Service Employment Act***	**Total**
Old Program Activity: **Processing of complaints relating to the appointment, revocation and lay-off provisions under the *Public Service Employment Act***	$4,968	$4,968

Reason for changes

Step 1 of the implementation of the Management, Resources and Results Structure (MRRS) required departments and agencies to develop fully articulated structures for their Program Activity Architecture (PAA) by April 30, 2007. As part of the MRRS exercise, the Tribunal's single strategic outcome and program activity were changed with input received from Treasury Board analysts to better reflect its mandate and describe its main responsibilities more accurately.

Voted and Statutory Items displayed in Main Estimates

($ thousands)

Voted & Statutory Item	Public Service Staffing Tribunal	**Current Main Estimates 2008–2009**	Previous Main Estimates 2007–2008
90	Program expenditures	**4,481**	4,451
(S)	Contributions to employee benefit plans	**487**	509
	Total Voted and Statutory Items	**4,968**	4,960

Planned Spending and Full Time Equivalents

($ thousands)	Forecast Spending 2007–2008[1]	**Planned Spending 2008–2009**	Planned Spending 2009–2010[2]	Planned Spending 2010–2011[2]
Adjudication and mediation of complaints filed under the *Public Service Employment Act*	4,960	**4,968**	–	–
Total Main Estimates	4,960	**4,968**	–	–
Adjustments:				
Supplementary Estimates (A)				
Operating budget carry forward	236			
Other				
Adjustment entry to reconcile to best estimate of forecast spending	(1,100)			
Total Adjustments	(864)	**–**	–	–
Total Planned Spending	4,096	**4,968**	–	–
Plus: Cost of services received without charge	532	**598**	–	–
Net cost of Program	4,628	**5,566**	–	–
Full Time Equivalents	33	**35**	35	35

[1] Reflects the best forecast of cash expenditures to the end of the fiscal year.

[2] The Tribunal is requesting funding to pursue its mandate.

Summary Information

Financial Resources ($ thousands)

2008–09	2009–10	2010–11
4,968	–	–

Human Resources

2008–09	2009–10	2010–11
35 FTEs	35 FTEs	35 FTEs

Program Activities by Strategic Outcome

		Planned Spending ($ thousands)			Contributes to the following priority
	Expected Results	2008–09	2009–10	2010–11	
Strategic Outcome:	Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada				
Program Activity Title	Adjudication and mediation of complaints filed under the *Public Service Employment Act*	4,968	–	–	Priorities 1 and 2

Public Service Staffing Tribunal Priorities

		Planned Spending ($ thousands)		
Name	Type	2008–09	2009–10	2010–11
1. Consider and dispose of complaints	Ongoing	2,278	–	–
2. Provide mediation services	Ongoing	880	–	–
3. Improve external communications	Ongoing	200	–	–
4. Strengthen corporate services	Ongoing	1,110	–	–
5. Strengthen human resources management	Ongoing	500	–	–

Tribunal Plans and Priorities

Operating Environment

The Public Service Staffing Tribunal officially began its operations on December 31, 2005 as part of the Government of Canada's strategy to modernize human resources management, including staffing and staffing recourse, in the federal public service.

Since its creation, the Tribunal has received approximately 1,000 complaints, the vast majority of which stem from internal appointment processes. The Tribunal also deals with complaints related to lay-offs, the revocation of an appointment or the implementation of a corrective action ordered by the Tribunal.

Under the new *Public Service Employment Act* (PSEA), the grounds for complaint with respect to an internal appointment process are: abuse of authority in the application of merit, abuse of authority in the choice of process and failure to evaluate a candidate in the language of their choice.

It was estimated that these limited grounds for complaint would lead to approximately 400 complaints per year. Although it is impossible to predict the number of complaints that will be presented to the Tribunal in a given year, current trends seem to indicate that the number of complaints should exceed the projected annual figure by at least 50 per cent.

The volume of complaints combined with the Tribunal's limited resources means that the Tribunal must implement practices and procedures that will ensure that complaints are dealt with in an efficient and effective manner. The priorities identified for 2008–2009 are intended to build upon the foundation laid in the Tribunal's first two years of operations by reviewing both the Tribunal's complaint and hearing processes and making any changes deemed necessary.

The Tribunal is authorized by the PSEA to make its own regulations respecting: the manner of and the time frame for submitting complaints; the procedure for hearings; the time frames for providing notices and other documents; the manner of giving notice of an issue to the Canadian Human Rights Commission and the disclosure of information obtained in the course of an appointment process or a complaint proceeding under the Act.

Experience in using the *Public Service Staffing Tribunal Regulations* in effect since December 31, 2005 has demonstrated that changes are necessary to clarify the intent of certain provisions. As a result, the Tribunal has undertaken a review of the *Regulations* in consultation with its major stakeholders. An amended version of the *Regulations* will be made available in 2008.

Internal Factors

With 25 employees and five full-time members, the Tribunal faces the same challenge as other very small agencies – that is, a large number of tasks to be performed by a small staff. The need to streamline procedures is essential in order to keep the workload manageable. Additional office space has been secured and there are a number of ongoing appointment processes for various positions with the Tribunal.

The lack of permanent funding for the Tribunal means that available resources must be utilized in the most cost-effective manner possible and that efforts to obtain a permanent source of funding will continue.

As the Tribunal is a key component of the *Public Service Modernization Act* (PSMA), including the new PSEA, the Tribunal's operations are critical to the credibility and effectiveness of both Acts. Without adequate, permanent funding, the Tribunal could face the following risks:

- Inability to process complaints in a timely manner, thereby resulting in a significant backlog.
- Loss of credibility, as the backlog increases and the Tribunal is unable to meet its objectives.
- High staff turnover as a result of an uncertain future.

Without the assurance that appropriate, ongoing funding is available for 2009-2010 and beyond, the Tribunal will continue to be distracted from its mandate by funding issues and concerns about serious shortfalls. As an independent recourse body, the Tribunal must be provided with a secure future; otherwise, the value and the benefits of the PSMA will be called into question. Appropriate, permanent funding will ensure that the Tribunal can focus on its mandate and that the public service can move forward to achieve modernization objectives and ensure high quality service to Canadians.

External Factors

Delegated managers in departments and agencies have begun to exercise the flexibility afforded to them under the new legislation and have undertaken an increasing number of collective staffing processes. Such processes can involve hundreds of candidates and result in multiple and successive appointments, which, in turn, may lead to a right of complaint being afforded with each appointment or set of appointments. This type of staffing action results in an increased workload for the Tribunal, particularly with regard to the administrative tasks required by the Registry's case management system – i.e., providing notice of the complaint to a large number of parties, scheduling hearings, etc.

A review of the PSMA (including the new PSEA) will take place in 2010. The Tribunal must not only ensure that its decisions reflect the spirit and intent of the new legislation, but also prepare recommendations with a view to improving its overall effectiveness.

With growing numbers of employees eligible for retirement, the Government of Canada is committed to renewing its workforce through more effective recruitment and more targeted employee development. A subsequent increase in the number of staffing actions could lead to a similar increase in the number of complaints to the Tribunal.

Although awareness of the Tribunal's complaint process has increased considerably among managers, human resources advisors and bargaining agent representatives, some concerns remain. There is, therefore, a continuing need to provide current and relevant information to all stakeholders.

Departments, agencies and bargaining agents all have limited resources to deal with staffing complaints. Due to the parties' own workloads, the Tribunal receives numerous requests to extend deadlines and frequently encounters difficulties when scheduling mediation sessions. Delays in the complaint process may occur as a result.

Program Priorities

This section provides details on specific initiatives identified for the planning period that support the Tribunal's strategic outcome: *Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada.*

Given that the Tribunal's sole program activity is the adjudication and mediation of complaints under the PSEA, the Tribunal's two main priorities remain constant.

1. Consider and dispose of complaints

   The unexpectedly high volume of complaints has underscored the need for a comprehensive and integrated case management system to ensure that complaints are handled as efficiently as possible. To this end, the Tribunal will continue to develop and implement a customized case management system that will perform numerous functions such as, enable Tribunal members and staff to check on the status of a file, schedule hearings and mediation sessions and permit complainants to monitor the progress of their complaints through the Internet.

   In light of the success of the alternate dispute resolution mechanisms already in place – that is, the exchange of information and pre-hearing conferences – the Tribunal will develop and implement a framework for the holding of settlement conferences. Settlement conferences will provide the parties with an opportunity to discuss the strengths and weaknesses of their case with the assistance of a Tribunal member.

   Tribunal members and staff are provided training on a variety of topics related to their work in order to ensure consistency and high quality in the decisions rendered.

2. Provide mediation services

   The demand for the Tribunal's mediation services continues to rise steadily. Over the past two years, experience has shown that two-thirds of all mediation sessions have taken place outside of the National Capital Region. Since meeting this demand has been somewhat of a challenge due to limited resources, the Tribunal will explore options for increasing the delivery of its mediation services in the regions.

   The Tribunal's Interest-based Negotiation and Mediation Training program will continue to be delivered on a regular basis across the country so that its main stakeholders – human resources specialists, delegated managers and bargaining agent representatives – are well prepared to assume their roles and responsibilities in mediation.

3. Improve external communications

The Tribunal's communication and outreach strategy has been largely successful. It is, nevertheless, crucial to the Tribunal's operations that its stakeholders continue to receive timely and relevant information regarding Tribunal decisions, policies and procedures. Accordingly, the Tribunal will continue to develop and disseminate communications products and tools and to seek every opportunity for establishing and maintaining positive relationships with stakeholder groups.

The Tribunal is reviewing the mandate of its stakeholder discussion group with a view to further developing its forum for regular and meaningful consultation.

In 2008-2009, the Tribunal's website will be revamped to ensure that its content is widely accessible and Tribunal representatives will continue to deliver presentations to interested groups whenever requested to do so.

Management Priorities

1. Strengthen corporate services

The Tribunal is now well positioned to be able to improve its management practices. In the coming year, a comprehensive yet practical information management policy and plan will be developed and implemented in stages. A five-year audit and evaluation plan has been developed and will be implemented starting this fiscal year.

2. Strengthen human resources management

With its basic infrastructure in place, the Tribunal can devote more time and resources to developing an integrated human resources and business plan, continuous learning plans for all employees and developing human resources policies in areas such as performance management, employee assistance and values and ethics.

Link to the Government of Canada Outcome areas

Government Affairs

The PSEA was intended to modernize staffing in the public service by providing independent recourse for complaints related to internal appointments and lay-offs and also increase the availability and effectiveness of mediation in resolving complaints.

In striving to provide transparent, impartial and sound decision-making to departments, agencies and bargaining agents as well as the necessary support to help the parties resolve complaints without a formal hearing, the Tribunal contributes to both the effective management of human resources in the public service and the protection of the integrity of the appointment process. In so doing, the Tribunal provides support to a public service based on merit and capable of delivering services of the highest quality to Canadians.

SECTION II

Analysis of Program Activities by Strategic Outcome

Strategic Outcome

Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada.

Indicator	Target
Percentage of complaints referred to judicial review on the grounds that the Tribunal failed to observe a principle of natural justice, procedural fairness or other procedure	3%

Financial Resources ($ thousands)

2008–09	2009–10	2010–11
4,968	–	–

Human Resources

2008–09	2009–10	2010–11
35 FTEs	35 FTEs	35 FTEs

Performance Measurement Strategy

In the Tribunal's 2007-2008 Report on Plans and Priorities, the targets for the various indicators could not be well defined, as the Tribunal's operations were still in the developing stages. In the past year, the Tribunal has developed a performance measurement framework in accordance with the MRRS and identified new, specific targets for each of the indicators. It should be noted that the Tribunal's performance measurement framework continues to be improved as the Tribunal gains more experience and refines its complaint policies and procedures.

Program Activity

Adjudication and mediation of complaints filed under the *Public Service Employment Act.*

Expected Results

1. Tribunal decisions are timely, sound and well reasoned

The Tribunal's first objective is to render high quality decisions with respect to complaints filed under the *Public Service Employment Act.* An important measure of quality is the number of legal challenges of Tribunal decisions submitted to the Federal Court for judicial review and, of those, the number dismissed.

It is also important to measure the time it takes to issue a decision following a hearing. Measuring the time elapsed between the filing of a complaint and the hearing of the complaint is not a good indicator due to the many factors beyond the control of the Tribunal – for example, the number of legitimate requests to extend deadlines, the difficulty of scheduling both mediation sessions and hearings, etc.

The indicators and targets for measuring the quality and time involved in rendering decisions are as follows:

Indicator	Target
Percentage of decisions where reasons are issued within two months of hearing	80%
Percentage of Tribunal decisions upheld on judicial review	95%

2. Optimal utilization of Tribunal's dispute resolution services by parties

In keeping with the spirit and intent of the *Public Service Modernization Act*, the Tribunal strives to assist the parties resolve the complaint without having a formal hearing.

In its 2007-2008 Report, the Tribunal established a 40% participation rate for mediation – that is, the Tribunal's goal was that 40% of all complaints filed would be referred to mediation. However, the parties to a complaint are not obliged to participate in mediation. It was therefore determined that a more appropriate indicator to assess the effectiveness of the Tribunal's mediation services would be the number of withdrawals of complaint (in percentage terms) that result from mediation.

As such, the indicator and target for measuring the use of the Tribunal's dispute resolution services are as follows:

Indicator	Target
Percentage of mediations resulting in withdrawal of complaint	70%

SECTION III
Supplementary Information

Table 1: Services Received Without Charge

($ thousands)	2008–2009
Accommodation provided by Public Works and Government Services Canada	376
Contributions covering employers' share of employees' insurance premiums and expenditures paid by Treasury Board of Canada Secretariat	222
2008–2009 Services received without charge	598

SECTION IV

Other Items of Interest

Statute and Regulations

Public Service Employment Act	S.C. 2003, c. 22, ss. 12 and 13
Public Service Staffing Tribunal Regulations	SOR/2006-6

Contact Information

Public Service Staffing Tribunal
240 Sparks Street
6th Floor West
Ottawa, ON K1A 0A5

Telephone:	613-949-6516 or 1-866-637-4491
Facsimile:	613-949-6551
TTY:	1-866-389-6901
E-mail:	Info@psst-tdfp.gc.ca
Web site:	www.psst-tdfp.gc.ca

Publications and Other Relevant Documents

Public Service Staffing Tribunal Procedural Guide, 2007

Statutory Responsibilities

The *Public Service Employment Act* requires or permits the Tribunal to undertake the following activities:

1. consider and dispose of complaints presented to the Tribunal [subs. 88(2)];
2. in the case of a founded complaint involving a lay-off of an employee, set aside the decision of a deputy head to lay off the employee and order the deputy head to take any corrective action that it considers appropriate, other than the lay-off of another employee [subs. 65(4)];
3. in considering whether a complaint against a lay-off is substantiated, interpret and apply the *Canadian Human Rights Act*, other than its provisions relating to the right to equal pay for work of equal value [subs. 65(7)];
4. in the case of a founded complaint involving a revocation of an appointment, order the Public Service Commission or the deputy head to set aside the revocation [s. 76];
5. in the case of a founded complaint involving an internal appointment, order the Public Service Commission or the deputy head to revoke the appointment or not to make the appointment and to take any corrective action that it considers appropriate [subs. 81(1)];
6. in considering whether a complaint against an internal appointment is substantiated, interpret and apply the *Canadian Human Rights Act*, other than its provisions relating to equal pay for work of equal value [s. 80];
7. in the case of a complaint involving a corrective action ordered by the Tribunal, order the Public Service Commission or the deputy head to revoke the appointment made as a result of the implementation of the corrective action, or not to make the appointment, and give the Commission or the deputy head any directions that it considers appropriate with respect to the implementation of the corrective action [s. 84];
8. provide mediation services at any stage of a proceeding in order to resolve a complaint [subs. 97(1)];
9. summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath in the same manner and to the same extent as a superior court of record [par. 99(1)(a)];
10. order that a hearing be conducted using any means of telecommunications that permits all persons participating to communicate adequately with each other [par. 99(1)(b)];
11. administer oaths and solemn affirmations [par. 99(1)(c)];
12. accept any evidence, whether admissible in a court of law or not [par. 99(1)(d)];

13. compel, at any stage of a proceeding, any person to produce any documents and things that may be relevant [par. 99(1)(e)];

14. subject to any limitations that the Governor in Council may establish in the interests of defence or security, enter any premises of an employer where work is being or has been done by employees, inspect and view any work, material, machinery, appliances or articles in the premises and require any person in the premises to answer all proper questions relating to a complaint [par. 99(1)(f)];

15. summarily dismiss any complaint that, in its opinion, is frivolous or vexatious [subs. 99(2)];

16. decide a complaint without holding an oral hearing [subs. 99(3)];

17. render a decision on a complaint and provide a copy of it, including any written reasons, and any accompanying order to the Public Service Commission and to each person who exercised the right to be heard on the complaint [s.101];

18. make regulations respecting complaint time limits and procedures, procedures for the hearing of complaints, time limits and procedures for notices and other documents, notice of an issue to the Canadian Human Rights Commission and the disclosure of information [s.109];

19. prepare and submit an annual report to Parliament through the Minister of Canadian Heritage regarding activities during the fiscal year [subs. 110 (1)].

20. may use any services and facilities of departments, boards and agencies of the Government of Canada that are appropriate for the operation of the Tribunal [subs. 93(2)].